

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ISMAEL HARRIS

PETITIONER

v.

No. 4:10CV101-A-S

EMMITT SPARKMAN, ET AL.

RESPONDENT

**ORDER TRANSFERRING CASE TO THE
FIFTH CIRCUIT COURT OF APPEALS**

This matter comes before the court, *sua sponte*, for consideration of the transfer of this cause. Ismael Harris has submitted a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. The petitioner was convicted for aggravated assault and possession of a firearm by a convicted felon as a habitual offender on May 8, 2003.

The petitioner has filed at least one other unsuccessful 2254 petition concerning the same conviction which he now seeks to challenge. *See Harris v. Hood*, 4:06CV76-P-B (N.D. Miss.). The Antiterrorism and Effective Death Penalty Act requires that before a petitioner files a second or successive petition, “the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” The petitioner has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(c). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997). Therefore, in the interest of justice and judicial economy, it is hereby

ORDERED:

1) That this petition shall be transferred to the Fifth Circuit Court of Appeals for the petitioner to seek permission to file this successive 2254 petition;

2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(c), and *In re Epps*, 127 F.3d at 365; and

3) this case is **CLOSED**.

THIS the 5th day of October, 2010.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE